

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES MICHAEL ROMAN a/k/a
JAMES ROBERT ROMANSKY, JR.
(CRD No. 4846101),

Respondent.

Disciplinary Proceeding
No. 20110260294

Hearing Officer – LBB

DEFAULT DECISION

Date: November 27, 2012

Respondent is barred for failure to provide documents and information, in violation of FINRA Rules 8210 and 2010. No additional sanction is imposed for Respondent's failure to provide prior written notice of one outside business activity, in violation of FINRA Rules 3270 and 2010. The charge of failure to provide prior written notice of other outside business activities is dismissed. The charge of failure to comply with the standards for communications with the public, in violation of NASD Rule 2210 and FINRA Rule 2010, is dismissed.

Appearances

Michael S. Choi, Esq., Director, and Clarence E. Sanders, Jr., Esq., Senior Counsel, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement filed the three-cause Complaint in this disciplinary proceeding on August 21, 2012. The First Cause of Action charges Respondent with participating in outside business activities without providing prompt written notice to his firm, in violation of FINRA Rules 3270 and 2010. The Second Cause of Action charges Respondent with disseminating sales literature that did not comply with FINRA's standards for communications with the public, in violation of NASD Rules 2210(d)(1)(A), 2210(d)(1)(B),

2210(d)(1)(D), and FINRA Rule 2010. The Third Cause of Action charges Respondent with failure to comply with requests for documents and information, in violation of FINRA Rules 8210 and 2010.

Despite being served with the Notice of Complaint, Complaint, and Second Notice of Complaint, Respondent did not answer or otherwise respond to the Complaint. By failing to respond to the Complaint, he defaulted. Enforcement filed a Motion for Entry of Default Judgment and Imposition of Sanctions on October 18, 2012. Respondent has not filed a response to Enforcement's motion. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269, the allegations of the Complaint are deemed admitted, and Enforcement's motion is granted with respect to some, but not all, of the charges in the Complaint. The Hearing Officer finds that Respondent violated FINRA Rules 3270 and 2010 by acting as the chief financial officer of a company without providing prior written notice to his firm, and violated FINRA Rules 8210 and 2010 by failing to respond to requests for documents and information. The Hearing Officer dismisses the charges that Respondent violated FINRA Rules 3270 and 2010 by selling investments in two companies, because there is insufficient information to determine whether the activities are outside business activities or private securities transactions, which are covered by different rules.¹

JURISDICTION

Respondent was employed by various member firms, and registered with FINRA, from 2004 until September 30, 2011. During the time of the misconduct charged in the First and Second Causes of Action, he was associated with LPL Financial Corporation, where he was

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration of Michael S. Choi in Support of Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ___." The supporting documentation is cited as "CX- ___."

registered from October 2009 until March 11, 2011, and then with Caldwell International Securities, where he was registered from March 30, 2011, until September 30, 2011. He has not been registered with a member firm since Caldwell terminated his employment on September 30, 2011. Decl. ¶ 6; CX-1.

Pursuant to Article V, Section 4 of FINRA's By-Laws, Respondent is subject to FINRA's jurisdiction because the Complaint was filed within two years after the termination of his registration with a member firm, and the Complaint charges him with violations that occurred while he was registered with member firms, and with failure to respond to requests for information issued within two years after the termination of his registration with a member firm.

RESPONDENT'S DEFAULT

On August 21, 2012, Enforcement served copies of the Complaint and Notice of Complaint on Respondent at his residential address as listed in the Central Registration Depository ("CRD"), and an alternate address that Enforcement found in a LexisNexis search. The mailings were sent by certified and first-class mail. Enforcement also sent a copy of the documents to Respondent by e-mail. Decl. ¶¶ 11-14; CX-4, CX-5. The certified mailings and the first-class mailing to Respondent's CRD address were returned by the Postal Service without successful delivery to Respondent. Decl. ¶¶ 16-19; CX-6 – CX-8. Respondent did not answer or otherwise respond to the Complaint by September 18, 2012, the date set forth in the Notice of Complaint as the deadline for filing an answer. Decl. ¶ 21.

Enforcement served Respondent with copies of the Complaint, Notice of Complaint, and Second Notice of Complaint, on September 19, 2012. The documents were served by certified and first-class mail at Respondent's CRD address and the alternate address. Enforcement also sent copies to Respondent by e-mail. Decl. ¶¶ 22-23; CX-9, CX-10. The Postal Service returned all the mailings to Enforcement without successful delivery. Decl. ¶¶ 25-28; CX-11 – CX-14.

The Second Notice notified Respondent that he was required to answer the Complaint by October 6, 2012. Respondent has not answered or otherwise responded to the Complaint. Decl. ¶¶ 29-30; CX-9.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

ORIGIN OF FINRA'S INVESTIGATION

On or about January 13, 2011, FINRA received a regulatory tip reporting the possibility that Respondent was engaged in an unapproved outside business activity. On March 11, 2011, LPL filed a Uniform Termination Notice For Securities Industry Registration (Form U5) reporting the termination of Respondent's association with LPL on February 28, 2011, for participating in an unapproved and undisclosed outside business activity in violation of the Firm's policies and procedures. Decl. ¶¶ 4-5.

FACTS

I. Facts Related to Respondent's Alleged Outside Business Activities

A. Respondent Establishes Roman Financial Services

At various times during the Relevant Period (between approximately January 2011 and September 2011), Respondent operated offices of LPL or Caldwell from his home office. Complaint ¶ 6. On October 18, 2010, LPL authorized Respondent to conduct business on behalf of LPL as Roman Financial Services. Complaint ¶ 6.

B. Respondent Solicited Investments in the Real Estate Investment Group

In or before January 2011, Respondent created the Real Estate Investment Group ("REIG") to purchase, repair, and resell foreclosed properties through Roman Financial Services. Complaint ¶ 7. From approximately January 2011 through February 2011, while associated with

LPL, Respondent solicited investors and engaged in other activities for REIG. Complaint ¶ 8. Respondent did not provide prior written notice to LPL that he was engaged in such activities and did not obtain approval from LPL to engage in the activities. Complaint ¶ 9.

In or before January 2011, Respondent created a marketing brochure advertising the opportunity to invest in REIG. The brochure provided information regarding the investment, such as expected returns and Respondent's role in REIG. Complaint ¶ 10. Respondent's REIG brochure was incomplete, misleading, and failed to provide a sound basis for evaluating the facts regarding the investment, including the risks associated with the investment. Complaint ¶ 11. For example, the REIG brochure failed to describe the inherent risks of the investment, or the fees and expenses associated with the investment, including Respondent's compensation. Complaint ¶ 11. In addition, the REIG brochure made exaggerated and unwarranted claims and forecasts. For example, the "Expected Return" paragraph of the REIG brochure presented gross, hypothetical figures that were misleading, and included misleading statements about the length of Respondent's tenure with Merrill Lynch, where he was employed from August 2004 until May 2005. Complaint ¶¶ 3, 12; CX-1.

In January 2011, Respondent, without LPL's knowledge, solicited investments in REIG from several members of a business networking group with which Respondent was associated. Complaint ¶ 13. On January 10, 2011, without LPL's knowledge, Respondent sent an e-mail to JB, a member of the business networking group, attaching the REIG marketing brochure. Respondent's e-mail asked JB to indicate his level of interest in REIG, and to forward the e-mail to anyone who might be interested. The e-mail stated that Respondent wanted to launch the project in late winter or early spring of 2011. Complaint ¶ 14.

Respondent also solicited investments from at least one LPL customer. On January 10, 2011, without LPL's knowledge or approval, Respondent sent an e-mail to SH, an LPL customer, attaching the REIG marketing brochure. The e-mail stated that Roman Financial Services was putting REIG together, and asked SH to forward the e-mail to anyone else who might be interested. Respondent also noted that he wanted to get the project launched in late winter or early spring. Complaint ¶15.

On January 12, 2011, Respondent asked LPL's Advertising Compliance Department for permission to disseminate the marketing brochure. The department notified Respondent on January 18, 2011, that his request was not approved. Complaint ¶¶ 16-17.

Respondent left LPL in February 2011 and joined Caldwell in March 2011. Complaint ¶ 18. In August and September 2011, without Caldwell's knowledge, Respondent solicited members of his business networking group and other individuals to invest in REIG. Complaint ¶ 19. Respondent did not provide written notice to Caldwell about his involvement in REIG and did not obtain Caldwell's approval to engage in the activity. Complaint ¶ 20.

C. Respondent Solicited Investments in 4G Biometrics LLC and Acted as Its Chief Financial Officer

4G Biometrics LLC is a medical services company. Complaint ¶ 21. On February 15, 2011, without LPL's knowledge or approval, Respondent e-mailed a potential investor in 4G, identifying himself as the Chief Financial Officer of 4G. He indicated that he understood that the investor was interested in making a \$50,000 investment in 4G, in the form of a loan to 4G, and receiving stock as a bonus. Respondent attached 4G's "Business Overview and Financial Analysis." He stated that 4G was offering "a few select individuals ... three unique opportunities to invest in our business." Complaint ¶ 22. The document attached to Respondent's e-mail provided information about the company, identified Respondent as 4G's

chief financial officer with a projected \$110,000 salary for 2011, and provided Respondent's biography. Complaint ¶ 23.

On February 16, 2011, Respondent submitted an electronic request to LPL for authorization to engage in tax preparation, accounting, and bookkeeping activities for 4G. On February 18, 2011, LPL approved Respondent's request. Complaint ¶ 24. Respondent did not notify LPL in writing that he would serve as an officer of 4G or that he would solicit investors for 4G. Respondent did not receive approval from LPL to engage in these activities. Complaint ¶ 25.

II. Respondent Failed to Respond to Requests for Information and Documents

During an on-the-record interview on October 13, 2011, as part of FINRA's investigation of Respondent's conduct, Enforcement directed Respondent to produce certain e-mail communications by October 17, 2011, and certain documents and information by October 24, 2011. The request was made pursuant to FINRA Rule 8210. Complaint ¶ 26; Decl. ¶ 38. Respondent failed to produce the information and documents by the dates set forth in the request. Complaint ¶ 27.

On October 25, 2011, Enforcement sent Respondent a letter by certified and first-class mail, at his CRD address. Enforcement also sent copies to Respondent at Caldwell by first-class and certified mail, and to Respondent's e-mail address. The letter required Respondent, pursuant to FINRA Rule 8210, to provide the information and documents that had been previously requested, and instructed him to produce the documents and information by November 3, 2011. Complaint ¶ 28. The certified mailings, but not the first-class mailings, were returned undelivered. Complaint ¶ 29. Respondent did not provide the information and documents by November 3. Complaint ¶ 30.

On January 10, 2012, Enforcement sent a letter to Respondent by first-class and certified mail at his CRD address, and to an alternate address. Enforcement also sent the letter to Respondent by e-mail. Complaint ¶ 31. The letter again directed Respondent, pursuant to FINRA Rule 8210, to produce the information and documents previously requested, pursuant to FINRA Rule 8210, and to comply by January 20, 2012. The certified mailings were returned undelivered. The first-class mailings were not returned. Complaint ¶ 32. Respondent failed to provide the documents and information by January 20, 2012, and has not yet provided them. Complaint ¶¶ 33-34.

CAUSES OF ACTION

I. Respondent Violated FINRA Rule 3270 By Engaging in One of the Outside Business Activities Charged in the First Cause of Action, Without Providing Prior Written Notice to His Firm; the Charge is Dismissed with Respect to the Other Alleged Outside Business Activities

The Complaint alleges sufficient facts to find that Respondent was engaged in an outside business activity by acting as the chief financial officer of 4G, and failed to provide prior written notice to his firm of that activity, thereby violating Rule 3270. The Complaint is dismissed with respect to the allegations relating to Respondent's solicitation of investors in REIG and 4G because the Complaint fails to provide enough information to determine whether Respondent's activities involved the sale of securities, which would be covered by NASD Rule 3040, and not by FINRA Rule 3270.

FINRA Rule 3270 requires registered representatives to provide prior written notice to their member firms before engaging in any outside business activity.² FINRA has been careful

² "No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member."

to distinguish between outside business activities and private securities transactions.³ FINRA Rule 3270 does not apply if the outside business activity involves a private securities transaction (“selling away”), which is governed by NASD Rule 3040.⁴ Thus, NASD Rule 3040 and FINRA Rule 3270 are mutually exclusive – an outside activity can be a private securities transaction under NASD Rule 3040 or an outside business activity under FINRA Rule 3270, but it cannot be both.⁵

The document Respondent provided to a potential investor represented that Respondent was the chief financial officer of 4G, and would receive a salary from the company, an outside business activity. His notice to LPL indicated that he would engage in tax preparation, accounting, and bookkeeping activities for 4G, but not his role as the CFO, and therefore was insufficient to notify LPL of the true nature of his outside business activity. Accordingly, the allegations of the Complaint are sufficient to establish, for purposes of this Default Decision, that Respondent violated FINRA Rules 3270 and 2010 by acting as 4G’s Chief Financial Officer without providing prior written notice to his firm.

The charges that he engaged in an outside business activity by selling the investments in REIG and 4G are dismissed because Enforcement has not shown that the investments were not securities, and the allegations in the Complaint suggest that they might be. “To establish the existence of an investment contract, and consequently a security, there must be: (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits, (4) to come

³ *Dep’t of Enforcement v. Strong*, No. E8A2003091501, 2008 FINRA Discip. LEXIS 19, at *8-17 (N.A.C. Aug. 13, 2008) (dismissing case charging selling away because Enforcement failed to prove that the product sold by Respondent was a security).

⁴ FINRA Rule 3270 explicitly exempts selling away from coverage of Rule 3270. “[A]ctivities subject to the requirements of NASD Rule 3040 shall be exempted from this requirement.”

⁵ *Dist. Bus. Conduct Comm. v. Douglas*, Nos. C06920046 and C06930068, 1995 NASD Discip. LEXIS 217, at *18 (N.B.C.C. Sept. 19, 1995); NTM 03-65, 2003 NASD LEXIS 75, at *3-4 (Oct. 28, 2003); NTM 91-32, 1991 NASD LEXIS 49 (NASD 1991); NTM 88-86, 1988 NASD LEXIS 207, at *3-4 (Nov. 1988).

solely from the efforts of the promoter or a third party.”⁶ The allegations of the Complaint suggest that the first three elements, and perhaps the fourth, are present in the REIG investment, but the Complaint is insufficiently detailed to make a finding. The Complaint alleges that Respondent offered an investment in REIG; REIG was a “Group,” and therefore appears to be a common enterprise; and the brochure makes claims concerning the expected return on the investment, establishing that there was an expectation of profit. The Complaint does not describe the roles of the investors in REIG, and thus provides insufficient information to determine whether the profits will be derived solely from the efforts of others. Because the Complaint fails to set forth facts sufficient to determine whether the investment was a security, and therefore not covered by FINRA Rule 3270, the Complaint is dismissed with respect to the investment in REIG.⁷

The Complaint contains no information on what Respondent was selling with respect to 4G, except that it was an investment. Although the Complaint alleges that a customer was interested in lending money to the company and receiving stock as a bonus, the Complaint does not state whether 4G was soliciting a loan, a stock purchase, both, or neither. Enforcement failed to plead sufficient facts to permit a determination of whether the investment was a security. The Complaint is dismissed with respect to the investment in 4G.

⁶ *Dep’t of Enforcement v. De Vietien*, No. 2006007544401, 2010 FINRA Discip. LEXIS 45, at *16 (N.A.C. Dec. 28, 2010), citing *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-299 (1946).

⁷ Because this Default Decision imposes a bar for Respondent’s violations of FINRA Rule 8210 and 2010, it was not necessary to seek additional information from Enforcement to determine whether the REIG investment, or the 4G investment was a security, and the Hearing Officer did not ask Enforcement to supply such information.

II. The Complaint Fails to Allege Facts Sufficient to Find that Respondent Violated FINRA Rule 2210 by Disseminating Sales Literature that Did Not Comply with FINRA's Rules

The Second Cause of Action alleges that Respondent violated NASD Rules 2210(d)(1)(A), (B), and (D), and FINRA Rule 2010, by disseminating sales literature that did not comply with FINRA's standards for communications with the public. The sales literature is not specifically identified, but presumably includes both the sales brochure for REIG and the "Business Overview and Financial Analysis" for 4G.

NASD Rule 2210(a)(2) defines sales literature as including certain types of material that is "generally distributed or made generally available to customers or the public ... concerning a member's products or services." The allegations of the Complaint do not establish that the sales brochure or the business overview concerned the products or services of LPL, his member firm when he disseminated the sales literature, because the Complaint expressly charges that the REIG and 4G opportunities were outside business activities. The Second Cause of Action is dismissed.

III. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Respond to Requests for Information and Documents

The Third Cause of Action charges Respondent with failure to respond to requests for information and documents that were made at an on-the-record interview, and in two written requests. The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide documents and information, in violation of FINRA Rules 8210 and 2010.⁸

⁸A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

SANCTIONS

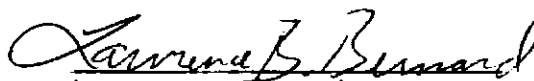
The FINRA Sanction Guidelines (“Guidelines”) recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.⁹ Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. Respondent failed to respond to three requests for information. There are no mitigating factors. A bar is the appropriate sanction.

In light of the bar, no additional sanction is imposed for Respondent’s failure to provide prior written notice of an outside business activity to his member firm, in violation of FINRA Rules 3270 and 2010.

CONCLUSION

Respondent James Michael Roman is barred from associating with any member firm in any capacity for failure to provide documents and information, in violation of FINRA Rules 8210 and 2010. No additional sanction is imposed for Respondent’s failure to provide prior written notice of one outside business activity, in violation of FINRA Rules 3270 and 2010. The charge of failure to provide prior written notice of other outside business activities is dismissed. The charge of failure to comply with the standards for communications with the public, in violation of NASD Rule 2210 and FINRA Rule 2010, is dismissed.

The bar will become effective immediately if this Decision becomes FINRA’s final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

⁹ *Guidelines* 33 (2011).

Copies to: James Michael Roman (*via overnight courier and first-class mail*)
Michael S. Choi, Esq. (*via electronic and first-class mail*)
Clarence E. Sanders, Esq. (*via electronic mail*)
Richard Best, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

James Michael Roman, a.k.a.
James Robert Romansky, Jr.
(CRD No. 4846101),

Respondent.

DISCIPLINARY PROCEEDING
No. 20110260294

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. At various times between approximately January 2011 and September 2011 (the "Relevant Period"), Respondent solicited potential investors to invest in two different outside business activities for which he had not sought or received approval from either of his member firm employers. Without approval, Respondent solicited investments via email and distributed a marketing brochure containing misleading statements that violated FINRA's standards for communications with the public. Respondent also failed to comply with FINRA requests for information regarding his conduct.

2. By virtue of this conduct, Respondent violated FINRA Rules 3270 and 2010, NASD Rules 2210(d)(1)(A), 2210(d)(1)(B) and 2210(d)(1)(D), and FINRA Procedural Rule 8210.

RESPONDENT AND JURISDICTION

3. Respondent entered the securities industry in August 2004 with a FINRA member firm ("BD") and was approved as a registered representative in October 2004. He remained at BD until May 2005. In June 2006, Respondent became associated with another FINRA member firm where he remained until June 2007. In June 2007, Respondent became associated as a registered representative with another FINRA member firm, which was later acquired by LPL Financial Corporation ("LPL") in or about September 2009. Respondent remained at LPL until February 2011. In March 2011 Respondent became associated as a registered representative with Caldwell International Securities ("Caldwell"), a FINRA member firm, where he remained until September 30, 2011. Respondent is not currently associated with any FINRA member firm.

4. Although Respondent is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed less than two years after Respondent's registration with Caldwell terminated on September 30, 2011, and charges him with misconduct committed while he was registered with FINRA members and with failing to respond to FINRA requests for information within two years after he ceased to be registered.

BACKGROUND AND FACTS

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.

6. At various times during the Relevant Period, Respondent operated offices of LPL or Caldwell from his home office in Little Elm, Texas. On October 18, 2010, LPL authorized Respondent to conduct business on behalf of LPL as Roman Financial Services.

Respondent's Unapproved Participation and Solicitations in Real Estate Investment Group

7. In or before January 2011, Respondent created the Real Estate Investment Group ("REIG") to purchase, repair and resell foreclosed properties through Roman Financial Services.

8. From approximately January 2011 through February 2011, while associated as a registered representative with LPL, Respondent solicited investors and engaged in other activities for REIG.

9. Respondent did not provide prior written notice to LPL that he was engaged in such activities and did not obtain approval from LPL to engage in the activities.

10. In or before January 2011, Respondent created a marketing brochure advertising the opportunity to invest in REIG. The brochure provided information regarding the investment, such as expected returns and Respondent's role in REIG.

11. However, Respondent's REIG brochure was incomplete, misleading, and failed to provide a sound basis for evaluating the facts regarding the investment, including the risks associated with the investment. For example:

- a. The REIG brochure failed to describe the inherent risks of the investment.
- b. The brochure did not describe fees and expenses associated with the investment, including Respondent's compensation.

12. The REIG brochure also made exaggerated and unwarranted claims and forecasts. For example:

- a. The "Expected Return" paragraph of the REIG brochure presented gross, hypothetical figures that were misleading.
- b. The brochure included misleading statements about the length of Respondent's tenure with member firm BD.

13. In January 2011, Respondent, without LPL's knowledge, solicited investments in REIG from several members of a business networking group ("Network Group") with which Respondent was associated.

14. On January 10, 2011, without LPL's knowledge, Respondent sent an email to JB, a member of the Network Group, attaching the REIG marketing brochure. The email stated:

I have attached the brochure from the Real Estate Investment Group we discussed last week. Please let me know your interest level in this group.

Also, if you know anyone that might be interested in this, please forward this to them because I would like to get this project launched in late Winter/early Spring.

15. Respondent also solicited investments from at least one LPL customer. On January 10, 2011, without LPL's knowledge or approval, Respondent sent an email to SH, an LPL customer, attaching the REIG marketing brochure. The email stated:

Roman Financial Services is putting together a Real Estate Investment Group. I have attached the brochure from Real Estate Investment Group for your review.

If you know anyone that might be interested in this, please forward this to them because I would like to get this project launched in late Winter/early Spring.

16. On January 12, 2011, after he had already circulated the brochure to at least two potential investors, Respondent emailed LPL's Advertising Compliance Department requesting permission to disseminate the REIG marketing brochure. Respondent stated in the email, "I would appreciate it if you could review the attached brochure. I would like to know if this is something I can do and if so, is this brochure appropriate."

17. On January 18, 2011, LPL notified Respondent that the REIG sales material and the outside business activity were not approved.

18. Respondent left LPL in February 2011 and joined Caldwell in March 2011.

19. Between August 2011 and September 2011, without Caldwell's knowledge, Respondent solicited members of the Network Group and other individuals to invest in REIG.

20. Respondent did not provide written notice to Caldwell about his involvement in REIG and did not obtain Caldwell's approval to engage in the activities.

Respondent's Unapproved Participation and Solicitations in 4G Biometrics L.L.C.

21. 4G is a biometrics monitoring and analytics company for diabetic subscribers. It was established in 2009 and is headquartered in Addison, Texas.

22. On February 15, 2011, without LPL's knowledge or approval, Respondent emailed a potential investor attaching a document titled "4G Business Overview and Financial Analysis." The email stated:

My name is James M. Roman, please feel free to call me Jim. I am 4G Biometrics' Chief Financial Officer. [DM] gave me your name and contact information. He said you are interested in a \$50,000 investment in 4G Biometrics in the form of a loan with a 10% return and stock in the company as a bonus.

I have attached an updated version of our Business Overview and Financial Analysis. This analysis shows the contracts already signed will generate at least \$3.5 million in revenue in 2011. One of my roles as CFO is to raise about \$300,000.00 to help bridge the gap as our contracts start to rollout. In order to do this, 4G Biometrics is offering a select few individuals three unique opportunities to invest in our business.

Please contact me if you or anyone you know are interested in this type of investment opportunity and/or any questions.

23. The 4G Business Overview and Financial Analysis provided information regarding 4G's background, business model and process, and sales and marketing strategy. It also identified Respondent as 4G's Chief Financial Officer with a projected \$110,000 salary for 2011 and provided Respondent's biography.

24. On February 16, 2011, Respondent submitted an electronic request to LPL for authorization to engage only in tax preparation, accounting and bookkeeping activities for 4G. On February 18, 2011, LPL approved Respondent's request.

25. Respondent did not notify LPL in writing that he would serve as an officer of 4G or that he would solicit investors for 4G. Respondent did not receive approval from LPL to engage in these activities.

Respondents' Failure to Cooperate

26. On October 13, 2011, as part of its investigation of Respondent's conduct, Enforcement requested that, pursuant to FINRA Rule 8210, Respondent produce certain email communications by October 17, 2011, and certain documents and information, including banking records, by October 24, 2011.

27. Respondent failed to provide the requested documents and information by the specified due dates of October 17, 2011 and October 24, 2011.

28. On October 25, 2011, Enforcement sent Respondent a letter by certified mail, return receipt requested, and a copy of the letter by first class mail, at his last known residential address reflected in the Central Registration Depository (the "CRD Address"). Enforcement also sent copies of the letter to Respondent at Caldwell's address (the "Firm Address") by certified mail, return receipt requested, and first class mail, and electronically to Respondent's email address. The letter requested that, pursuant to FINRA Rule 8210, Respondent provide the documents and information that Enforcement had previously requested by November 3, 2011.

29. The certified letter sent to Respondent's CRD Address was returned to Enforcement marked "Unclaimed/Unable To Forward." The certified mail sent to Respondent's

Firm Address was returned to Enforcement. The copies of the letters sent by first class mail to Respondent at the CRD Address and Firm Address were not returned to Enforcement.

30. Respondent failed to provide the requested documents and information by November 3, 2011.

31. On January 10, 2012, Enforcement sent a letter by certified mail, return receipt requested, and a copy of the letter by first class mail, to Respondent at the CRD Address. Copies of the letter were also sent by certified mail, return receipt requested, and first class mail to Respondent at an alternate address known to Enforcement (the "Alternate Address") and electronically to Respondent's email address. The letter requested for the third time, pursuant to FINRA Rule 8210, that Respondent provide by January 20, 2012, the documents and information that Enforcement had previously requested on October 13, 2011 and October 25, 2011.

32. The certified letter sent to Respondent's CRD Address was returned to Enforcement marked "Notify Sender of New Address." The certified mail sent to Respondent's Alternate Address was returned to Enforcement marked "Unclaimed/Unable To Forward." The copies of the letter sent by first class mail to Respondent at the CRD Address and Alternate Address were not returned to Enforcement.

33. Respondent failed to provide the requested documents and information by January 20, 2012.

34. To date, Respondent has not provided the requested documents and information to Enforcement.

35. Respondent's failure to provide the information requested by Enforcement has materially impeded the staff's investigation.

**FIRST CAUSE OF ACTION
Outside Business Activities
(FINRA Rules 3270 and 2010)**

36. The Department realleges and incorporates by reference paragraphs 1 through 35, above.

37. FINRA Rule 3270 prohibits any registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or being compensated, or having the reasonable expectation of compensation, from another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the firm in the form specified by the firm and received approval from the firm.

38. FINRA Rule 2010 provides that, "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

39. While employed at LPL, Respondent engaged in business activities with REIG outside the scope of his relationship with LPL, without providing prior written notice to LPL or receiving LPL's written approval. In so doing, Respondent committed separate and distinct violations of FINRA Rules 3270 and 2010.

40. Similarly, while subsequently employed at Caldwell, Respondent engaged in business activities with REIG outside the scope of his relationship with Caldwell without providing Caldwell prior written notice or receiving its written approval. Based upon this conduct, Respondent committed separate and distinct violations of FINRA Rules 3270 and 2010.

41. In addition, while employed at LPL, Respondent served as an officer of 4G and solicited an individual to invest in 4G, without providing LPL prior written notice or receiving its written approval. By engaging in these activities, Respondent committed separate and distinct violations of FINRA Rules 3270 and 2010.

SECOND CAUSE OF ACTION
Communications with the Public
(NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), 2210(d)(1)(D)
and FINRA Rule 2010)

42. The Department realleges and incorporates by reference paragraphs 1 through 41, above.

43. NASD Rule 2210(d)(1)(A) requires that all member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

44. NASD Rule 2210(d)(1)(B) requires that no member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

45. NASD Rule 2210(d)(1)(D) states that communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

46. By disseminating sales literature containing information that did not comply with FINRA's standards for communications with the public, Respondent violated FINRA Rules 2210(d)(1)(A), 2210(d)(1)(B) and 2210(d)(1)(D).

THIRD CAUSE OF ACTION
Failure to Comply with Requests for Information
(FINRA Rules 8210 and 2010)

47. The Department realleges and incorporates by reference paragraphs 1 through 46, above.

48. FINRA Rule 8210 provides that FINRA staff shall have the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.

49. FINRA rules required Respondent to respond to requests for documents and information and required Respondent to provide testimony. Respondent failed to provide the requested documents in connection with a FINRA investigation.

50. By failing to provide documents and information, Respondent violated FINRA Rules 8210 and 2010.

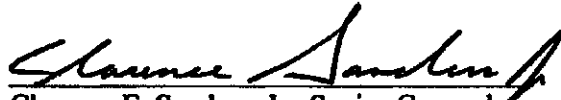
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 21, 2012



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